

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

BRET A. BIELEMA

PLAINTIFF

v.

5:20-cv-05104-PKH

THE RAZORBACK FOUNDATION, INC.

DEFENDANT

THE RAZORBACK FOUNDATION, INC.

COUNTER-PLAINTIFF

V.

BRET A. BIELEMA and NEIL CORNRICH

COUNTER-DEFENDANTS

DEFENDANT’S MOTION FOR LEAVE TO FILE AN AMENDED COUNTERCLAIM

Defendant/Counter-Plaintiff, The Razorback Foundation, Inc. (the “Foundation”), by and through its attorneys, Friday, Eldredge & Clark, LLP, for its Motion for Leave to File an Amended Counterclaim, states as follows:

1. The Final Scheduling Order allows the parties to seek leave to amend pleadings on or before February 1, 2021. Doc. No. 40 at 2.
2. The Foundation filed its Counterclaim on September 3, 2020.
3. Since the time the Foundation filed its Counterclaim, Coach Bielema has obtained a new position as head football coach at the University of Illinois. After two years and eleven months of supposedly being unable to find a coaching job paying enough to meaningfully reduce the Foundation’s obligations under the Release Agreement, Bielema suddenly obtained a new multi-million-dollar position just two weeks before the Release Agreement expired. These facts directly relate to whether Bielema performed his obligations under the Release Agreement in good faith. Furthermore, Bielema’s new, lucrative compensation package at the University of Illinois must be offset against the damages he seeks from the Foundation under the Release Agreement.

4. Additionally, during the course of discovery, the Foundation has received documents from the New England Patriots that demonstrate the Patriots' involvement in Bielema and Cornrich's scheme to place Bielema in a low-paying position with the Patriots during the term of the Release Agreement. The documents confirm an intentional arrangement whereby Bielema would maximize his benefit to the Foundation's detriment.

5. The Foundation has sought Bielema's and Cornrich's consent to amend its Counterclaim, and as of the date of this filing, neither party has provided his consent.

6. A true and correct copy of the proposed Amended Counterclaim is attached hereto as **Exhibit A** and incorporated herein by reference.

7. The Proposed Amended Counterclaim, the Brief in Support, and certain accompanying exhibits are being filed under seal because they include materials produced by the New England Patriots that were designated Confidential under the Protective Order. The Foundation attaches a redacted version of the Proposed Amended Counterclaim as **Exhibit B** hereto. The Foundation attaches a redacted version of the Brief In Support as **Exhibit J** hereto. The Court granted the Foundation's request to file the Proposed Amended Complaint, Brief In Support, and accompanying exhibits under seal. Doc. No. 68.

8. The Foundation submits and attaches hereto the following exhibits:

Exhibit A- Proposed Amended Counterclaim (Filed Under Sealed)

Exhibit B- Proposed Amended Counterclaim (Redacted)

Exhibit C - Email (Apr. 2, 2018), NEP_00216 (Filed Under Sealed)

Exhibit D - Email (July 27, 2018), NEP_000241 (Filed Under Sealed)

Exhibit E - Email (Feb. 18, 2019), NEP_000298-000299 (Filed Under Sealed)

Exhibit F - Email (April 12, 2019), NEP_000300 (Filed Under Sealed)

- Exhibit G - Correspondence to Thomas Mars from Marshall Ney (Dec. 22, 2020) (Filed Under Sealed)
- Exhibit H - Correspondence from Thomas Mars to Marshall Ney (Dec. 28, 2020) (Filed Under Sealed)
- Exhibit I - Email from Thomas Mars (Dec. 23, 2020)
- Exhibit J- Brief in Support (Redacted)
- Exhibit K- Redline of Proposed Amended Counterclaim (Filed Under Seal)

9. For the reasons set forth herein, in its brief in support, and in the accompanying exhibits, which are all incorporated herein by reference, the Foundation requests leave to file an Amended Counterclaim.

WHEREFORE, the Foundation prays that its Motion for Leave to File an Amended Counterclaim be granted and that the Court grant it any other relief to which it is entitled.

Respectfully submitted,

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By: /s/ Marshall S. Ney
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CERTIFICATE OF SERVICE

I, Marshall S. Ney, do hereby certify that the foregoing is being electronically filed with the Court and that the below listed persons will receive a copy of the foregoing via the Court's electronic notification system (ECF), on or about this 25th day of January, 2021:

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Additionally, I, Marshall S. Ney, do hereby certify that the below listed persons will receive a copy of the foregoing Motion for Leave to File an Amended Counterclaim and a copy of the Court's Order dated January 22, 2021 (Doc. 68) via e-mail and U.S. Mail, postage prepaid, on or about this 25th day of January, 2021:

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/s/ Marshall S. Ney
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